

Explanatory Statement

Marine Order 12 (Construction — subdivision and stability, machinery and electrical installations) 2016 (Order 2016/10)

Authority

1. Subsection 309(2) of the *Navigation Act 2012* (the Navigation Act) provides that the regulations may provide for the keeping of an official logbook including prescribing the entries to be made and the time of making the entries.
2. Subsection 339(1) of the Navigation Act authorises the Governor-General to make regulations necessary or convenient for carrying out or giving effect to the Navigation Act.
3. Paragraphs 339(2)(a) and (b) of the Navigation Act provides that the regulations may provide for the design and construction of vessels and for the machinery and equipment to be carried on board vessels.
4. Paragraph 339(2)(e) of the Navigation Act provides that the regulations may provide for the stability of vessels, including information about, and testing of, the stability of vessels.
5. Paragraph 340(1)(a) of the Navigation Act provides that the regulations may provide for giving effect to the International Convention for the Safety of Life at Sea (SOLAS).
6. Subsection 341(1) of the Navigation Act provides that the regulations may provide for the imposition of penalties for a contravention of a provision of the regulations.
7. Subsection 342(1) of the Navigation Act allows the Australian Maritime Safety Authority (AMSA) to make orders for any matter in the Act for or in relation to which provision may be made by regulations.
8. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power in an Act to make a legislative instrument includes the power to repeal or amend the instrument, subject to any conditions that apply to the initial power.
9. This Order is a legislative instrument for the *Legislation Act 2003*.

Purpose

This Order gives effect to Chapter II-1 of SOLAS other than Regulation 21 and prescribes standards for the structure, subdivision, stability, machinery and electrical installations for vessels to which Chapter II-1 of SOLAS applies and vessels to which Chapter II-1 of SOLAS does not apply. It also gives effect to the *Guidelines for the Design and Construction of Offshore Supply Vessels, 2006* of the International Maritime Organization (IMO) that were adopted by IMO Resolution MSC.235 (82) and to an earlier version of these guidelines adopted by IMO Resolution A.469(XII) (the OSV Guidelines).

Overview

10. This Order prescribes standards for vessel construction, subdivision, stability, watertight and weathertight integrity and electrical installations. It also sets out duties for masters of vessels about when doors and other openings should be closed and requires testing and inspection of watertight openings in vessels. Safety measures for means of access to vessels in port are also included in the Order. Provisions about watertight openings and means of access to vessels in port have been moved to this Order from *Marine Order 21 (Safety of navigation and emergency procedures) 2012* so that all the requirements implementing Chapter II-1 of SOLAS are in the same Marine Order.

Consultation

11. A draft of this Order was placed on AMSA's website on 7 April 2016 for public consultation with comments to be provided by 7 May 2016. Around 150 stakeholders including shipping and cargo industry bodies, maritime unions and relevant government agencies were contacted by email and invited to comment. No responses were received.

12. The Office of Best Practice Regulation (OBPR) was also consulted and considered that changes made by the Order have regulatory impacts of a minor or machinery nature and no regulation impact statement was required. The OBPR reference number is 20369.

Documents incorporated by reference

13. This Order incorporates the following documents by reference:

- Chapter II-1 of SOLAS
- the Annex to resolution 14 of the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 as adopted on 29 November 1995
- IMO Resolution MSC.141 (76), as amended from time to time
- *Marine Order 47 (Mobile offshore drilling units) 2012*
- *Marine Order 49 (High-speed craft) 2015*
- Sections 3 and 6 and Subsection 7D of Part C of the *National Standard for Commercial Vessels* (NSCV), as in force from time to time
- sections 5 and 8 and Appendices H and I of section 13 of the Uniform Shipping Laws (USL) Code adopted by the Australian Transport Council established by the Council of Australian Governments, as in force on 30 September 2008
- Parts 2, 3 and 8 of the *Guidelines for the Design and Construction of Offshore Supply Vessels, 2006* adopted by IMO Resolution MSC.235 (82) (the OSV Guidelines), as in force from time to time
- the *Guidelines for the Design and Construction of Offshore Supply Vessels* adopted by IMO Resolution A.469(XII)
- Appendix 2 of *Marine Orders Part 12: Construction — Subdivision and stability, machinery and electrical installations*, Issue 2 (Order No 16 of 1998)
- Chapter 4, paragraph 3.6.4 of Part B and Annex 1 of the *Code on Intact Stability, 2008* adopted by IMO Resolution MSC.267 (85) (the IS Code), as in force from time to time
- IMO Circular *Guidelines for construction, installation maintenance and inspection/survey of means of embarkation and disembarkation* set out in the Annex to MSC.1/Circ.1331, as amended from time to time
- ISO 5488:2015 *Ships and marine technology – Accommodation ladders*
- ISO 7061:2015 *Ships and marine technology – Aluminium shore gangways for seagoing vessels*
- ISO 7364:2016: *Ships and marine technology – Deck machinery – Accommodation ladder winches*

- International Association of Classification Societies (IACS) Unified Interpretation *Doors in Watertight bulkheads of cargo ships and Passenger Ships* set out in IACS UI SC 156 (June 2002), as amended from time to time.
- AS 1735.1:2003 *Lifts, escalators and moving walks – General requirements*
- ISO 8383:1985 *Lifts on ships – Specific requirements*

14. SOLAS is of treaty status and is incorporated “as amended and in force from time to time for Australia” (see definition of SOLAS in *Marine Order 1 (Administration) 2013*, and definition of Safety Convention in section 14 of the Navigation Act.). The original convention and any amendments in force can be found in the Australian Treaties Series accessible from the Australian Treaties Library on the AustLII website at <http://www.austlii.edu.au>.

15. The Annex to resolution 14 of the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 as adopted on 29 November 1995 is available through the Marine Orders link on the AMSA website at <http://www.amsa.gov.au>.

16. Information on obtaining access to IMO Resolution A.141 (76), IMO Resolution MSC.267 (85) and IMO Circular MSC.1/Circ.1331 is available on the Marine Orders link on the AMSA website at <http://www.amsa.gov.au>, where AMSA provides information on how to navigate the IMO website to download documents. IMO documents may also be purchased from the IMO — see the IMO website at <http://www.imo.org/publications>.

17. Marine Orders mentioned in this Order are available on the Federal Register of Legislation at <https://www.legislation.gov.au>. They are also available from the Marine Orders link on the AMSA website at <http://www.amsa.gov.au>. Paragraph 10(a) of the *Acts Interpretation Act 1901* (as applied by paragraph 13(1)(a) of the *Legislation Act 2003*) has the effect that the references in the Order to Marine Orders are references to those Orders as amended from time to time.

18. *Marine Orders Part 12: Construction — Subdivision and stability, machinery and electrical installations*, Issue 2 is available on the Federal Register of Legislation at <https://www.legislation.gov.au> as a legislative instrument no longer in force.

19. The NSCV and the USL Code are available through the Marine Orders link on the AMSA website at <http://www.amsa.gov.au>.

20. The *Guidelines for the Design and Construction of Offshore Supply Vessels, 2006* adopted by IMO Resolution MSC.235 (82) and the *Guidelines for the Design and Construction of Offshore Supply Vessels* adopted by IMO Resolution A.469(XII) are available through the Marine Orders link on the AMSA website at <http://www.amsa.gov.au>.

21. ISO standards and Australian standards are available for purchase from the SAI Global website at <https://www.saiglobal.com>. Persons having difficulty obtaining a copy of an ISO or Australian standard mentioned in this Order can contact AMSA. Contact details for AMSA are on the AMSA website at <http://www.amsa.gov.au>.

22. Information on obtaining copies of the IACS Unified Interpretation *Doors in Watertight bulkheads of cargo ships and Passenger Ships* set out in IACS UI SC 156 (June 2002) is available on the Marine Orders link on the AMSA website at <http://www.amsa.gov.au>. The website gives information on how to navigate the IACS website to download the document for free. This document is also available direct from the International Association of Classification Societies Ltd website at <http://www.iacs.org.uk>.

Commencement

23. This Order commenced on 1 July 2016.

Contents of this instrument

24. Section 1 sets out the name of the Order.

25. Section 1A provides for the commencement of the Order.

26. Section 1B repeals the previous issue of the Order.

27. Section 2 states the purpose of the Order, which is to give effect to Chapter II-1 of SOLAS other than Regulation 21, prescribe standards for the structure, subdivision, stability, machinery and electrical installations for vessels to which Chapter II-1 of SOLAS applies and for vessels to which Chapter II-1 of SOLAS does not apply, and to give effect to the OSV guidelines.

28. Section 3 sets out the powers in the Navigation Act that enable the Order to be made.

29. Section 4 sets out definitions of terms used in the Order.

30. Section 5 sets out some rules of interpretation for the Order.

31. Section 6 provides that the Order applies to regulated Australian vessels and foreign vessels.

32. Section 7 provides a process for applications for an exemption of a vessel from a requirement of the Order. An exemption may only be given if AMSA is satisfied that compliance with the requirement would be unnecessary or unreasonable, having regard to the vessel, its equipment and its intended voyage, and giving the exemption would not contravene SOLAS.

33. Section 8 provides for applications for approval to use an equivalent to a requirement of the Order. Approval may only be given if AMSA is satisfied that use of the equivalent would be at least as effective as compliance with the requirement to which the equivalent is an alternative and approving use of the equivalent would not contravene SOLAS.

34. Division 2 is about construction and stability requirements.

35. Section 9 provides that a vessel to which Chapter II-1 of SOLAS applies must meet the standards for structure, subdivision, stability, machinery and electrical installations that apply to it under Chapter II-1. Regulated Australian vessels must additionally comply with Schedule 1. Regulated Australian vessels that are ro-ro passenger vessels must also comply with the Annex to resolution 14 of the 1995 SOLAS Conference and IMO Resolution MSC.141 (76), as amended from time to time. However, a vessel that is surveyed and certified under a code mentioned in *Marine Order 47 (Mobile offshore drilling units) 2012* or *Marine Order 49 (High-speed craft) 2015* must instead meet the standards mentioned in the code under which it is certified. An offshore supply vessel must, in addition to complying with Chapter II-1 of SOLAS, comply with the OSV Guidelines.

36. Section 10 provides that a regulated Australian vessel to which Chapter II-1 of SOLAS does not apply must meet the standards for structure, subdivision, stability, machinery and electrical installations that apply to the vessel's area of operation under the NSCV or USL Code, or that are applied by the vessel's classification society. The section also provides that the indicator system of watertight doors must comply with Subsection 6B of Part C of the NSCV for a regulated Australian vessel to which Chapter II-1 does not apply if the vessel is not classified by a recognised organisation. For such a vessel, the vessel's anchors, chain cables, hawsers and warps must also comply with Subsection 7D of Part C of the NSCV for vessels built or upgraded after

30 September 2008, or with Appendices H and I of section 13 of the USL Code for older vessels. A foreign vessel to which Chapter II-1 does not apply, must carry and comply with any certificate or other document issued by or on behalf of the Administration.

37. Section 11 provides that a regulated Australian vessel that is an offshore supply vessel built after 30 May 2007 must meet the documentation standards mentioned in Part 8 of the OSV Guidelines. An offshore supply vessel built before 31 May 2007 must have a document confirming compliance with the OSV Guidelines.

38. Section 12 provides that the owner of a vessel must ensure that there is carried on a vessel at all times, information relating to the vessel's intact stability characteristics under different conditions of service. This information must be substantially in accordance with Appendix 2 of Issue 2 of this Order (for vessels constructed before 1 July 2010) or comply with paragraph 3.6.4 of Part B of the IS Code (for vessels constructed after 30 June 2010), and show that any inclining experiment or lightship measurement was carried out in accordance with Annex 1 of the IS Code (for a regulated Australian vessel), and be approved.

39. Division 3 is about other safety measures.

40. Section 13 provides that the master of a vessel must ensure that all watertight doors are closed while the vessel is at sea. However, a watertight door, other than a category A or category D watertight door, may be opened at sea if it is necessary for the door to be open for the working of the vessel or the door is opened and closed for testing in accordance with section 19. The master must also ensure that the area around the doorway of a watertight door is unobstructed.

41. Section 14 provides that the master of a vessel must ensure that, before each voyage starts, any portable plate over an opening in the internal watertight structure of a vessel is fitted. It also provides that master may order the removal of the plate when a vessel is at sea if he or she considers that it is an urgent necessity. A person may remove a portable plate when a vessel is at sea only on the direct order of the master.

42. Subsection 15(1) provides that the master of a vessel must ensure that vessel openings mentioned in the section are closed watertight and secured before the vessel leaves each berth or anchorage. The section also provides that a person must not open an opening mentioned in subsection (1) when the vessel is at sea.

43. Subsection 16(1) provides that the master of a vessel must ensure that the doors specified in the subsection are closed and secured before a vessel starts a voyage. Subsection (2) provides that a person may unlock or open such a door only when the vessel is at berth. However, the master of the vessel may allow the doors to be opened in specified circumstances. Subsection (4) provides that the master must ensure that the opening and closing of the doors is supervised by an officer.

44. Subsection 17(1) provides that the master of a vessel must ensure that any sidescuttle or deadlight on an area of the vessel used for the carriage of cargo is closed, watertight and locked before the cargo is loaded. Subsection (2) provides that a person must not unlock or open a sidescuttle or deadlight until the cargo is unloaded.

45. Section 18 provides that the master of a vessel must ensure that each cover and valve of any ash chute, rubbish chute or similar fitting that has an inboard opening below the margin line of the vessel is kept closed and secured when not in use.

46. Section 19 provides for the testing of specified openings and for their periodic operation. Requirements are imposed on the master of the vessel to ensure the testing occurs..

47. Section 20 provides that the owner of a vessel must ensure that specified appliances and fittings are marked with instructions on how to operate them safely and effectively. The section also provides that the master of a vessel must ensure that these appliances and fittings are inspected at least weekly.

48. Section 21 requires the master of a vessel to ensure that specified information such as the opening and closing times of doors is recorded in the official log-book in accordance with the section.

49. Section 22 sets out construction requirements and standards for a vessel, for equipment used for embarkation and disembarkation.

50. Section 23 provides that a person boarding or leaving a vessel must use the means of access provided or identified by the master.

51. Section 24 sets out the responsibilities of the master for the provision of access to the vessel. The master has a number of duties about the means of access, including keeping it clean, properly rigged and at an appropriate angle for safe access. Further requirements are set out for a range of matters including safety netting, access between two vessels, pilot ladders and use of cargo ramps for access.

52. Schedule 1 provides, for a vessel that is a regulated Australian vessel, construction and stability requirements that are additional to those that apply to the vessel in Chapter II-1 of SOLAS.

53. Schedule 2 provides specifications for accommodation ladders, gangways and safety nets on vessels.

Statement of compatibility with human rights

54. This statement is made for subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

55. This Order is made under the *Navigation Act 2012* (the Navigation Act). It gives effect to Chapter II-1 of the International Convention for the Safety of Life at Sea (SOLAS), other than Regulation 21, and prescribes standards for the structure, subdivision, stability, machinery and electrical installations for vessels to which Chapter II-1 of SOLAS applies and vessels to which Chapter II-1 of SOLAS does not apply. It also gives effect to guidelines of the International Maritime Organization for the design and construction of offshore supply vessels. The Order contains requirements on construction and stability and other safety measures for access to vessels in port and for the testing and closing of doors and other openings.

Human rights implications

56. Sections 12 to 21 and section 23 of the Order create offences to which strict liability applies. They also create civil penalties. Strict liability offences may engage and limit the presumption of innocence mentioned in Article 14 of the International Covenant on Civil and Political Rights (ICCPR). Civil penalty provisions may engage the criminal process provisions under Articles 14 and 15 of the ICCPR.

57. Strict liability is imposed to protect life while the vessel is both at sea and in port. The offences ensure compliance with SOLAS and other standards for vessel structure, subdivision, stability, machinery and electrical installations that are necessary for maritime safety. The penalties for these offences are relatively low (50 penalty units) and are within the limitation imposed by paragraph 341(1)(a) of the Navigation Act.

58. The civil penalty provisions are directed at the owner, master and people either on board the vessel or embarking or disembarking. They are regulatory rather than punitive. Civil penalties apply to all persons for conduct such as unlocking or

opening vessel openings at sea in the circumstances outlined in the Order, and for failure to comply with the master's directions for accessing the vessel in port. The civil penalty provisions, which are authorised by paragraph 341(1)(b) of the Navigation Act, are important safety measures. Having regard to the objectives of the civil penalty provisions (which are protective, preventative, disciplinary or regulatory in nature), and the relatively low level of penalty, the civil penalties should not be considered to be criminal matters for human rights law.

59. It is considered any limitation on human rights as a result of the imposition of strict liability and the creation of civil penalties is reasonable, necessary and proportionate for achieving the objective of saving lives at sea and on shore.

Conclusion

60. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate for the saving of lives at sea.

Making the instrument

61. This instrument has been made by the Chief Executive Officer of the Australian Maritime Safety Authority, in accordance with subsection 49(4) of the *Australian Maritime Safety Authority Act 1990*.